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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/781,049	02/09/2001	Rikihiro Iida	10830-054001 / A36-129092	7560
26211	7590	11/29/2004	EXAMINER	
FISH & RICHARDSON P.C. CITIGROUP CENTER 52ND FLOOR 153 EAST 53RD STREET NEW YORK, NY 10022-4611			JACKSON, CORNELIUS H	
			ART UNIT	PAPER NUMBER
			2828	

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/781,049

**Applicant(s)**

IIDA, RIKIHIRO

**Examiner**

Cornelius H. Jackson

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 19 August 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Acknowledgment*

1. Acknowledgment is made that applicant's Response, filed on 19 August 2004, has been entered and considered. Claims 1-3 are now pending in the present application.

### *Claim Rejections - 35 USC § 102*

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1-3 are rejected under 35 U.S.C. 102(e) as being anticipated by Kuo et al. (6563846). Kuo et al. disclose a DFB laser driving device **Fig. 1** comprising an input unit **15 and 17**, an approximate temperature calculating section, an output level

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variation calculating section **see col. 3, line 11-col. 6, line 56**, an output level controlling section **14**, and a temperature controlling unit **13**.

Regarding claim 2, Kuo et al. disclose inputting set values of a wavelength **17** and a output level **15**; calculating an approximate temperature of the DFB laser based on the set values of the wavelength and output level; calculating an output level variation of the DFB laser on the approximate temperature; calculating a calculated value based on the output level variation and the set value of the output level; controlling the output level of the DFB laser based on the calculated value; calculating a set temperature of the DFB laser based on the calculated value and the set value of the wavelength; and controlling the temperature of the DFB laser based on the set temperature, **see col. 1, line 65-col. 2, line 35 and col. 3, line 11-col. 6, line 56**.

Regarding claim 3, Kuo et al. disclose a storage medium **16** and all the other stated limitations, **see col. 3, line 11-col. 6, line 56**. Also note that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

4. Claims 1 and 3 are rejected under 35 U.S.C. 102(e) as being anticipated by Broutin et al. (6449077). Broutin et al. disclose a DFB laser driving device **Figs. 1 and 2** comprising an input unit (**remote input to terminal 160**) to input set values of a wavelength and an output level, an approximate temperature calculating section **160** (**it is inherent that the temperature is approximately calculated since the laser is controlled by the temperature**), an output level variation calculating section **160**, an

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output level controlling section **160/108/109**, and a temperature controlling unit **160/118/119/120**, **see col. 2, line 5-col. 6, line 14**.

Regarding claim 3, Broutin et al. discloses a storage medium and all the other stated limitations **see col. 2, line 5-col. 6, line 14, especially col. 5, lines 47-64**. Also note that it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Broutin et al. (6449077). Broutin et al. teach inputting set values of a wavelength and a output level, **see col. 2, line 5-col. 6, line 14**. Broutin et al. fail to teach calculating an approximate temperature of the DFB laser based on the set values of the wavelength and output level; calculating an output level variation of the DFB laser on the approximate temperature; calculating a calculated value based on the output level variation and the set value of the output level; controlling the output level of the DFB laser based on the calculated value; calculating a set temperature of the DFB laser based on the calculated

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value and the set value of the wavelength; and controlling the temperature of the DFB laser based on the set temperature. Instead, Broutin teach that one of ordinary skill *in that art* recognizes that the processor may form the control signals 109 and 119 based on a variety of conventional algorithms, **see col. 5, lines 61-64**. Therefore it would have been obvious to one of ordinary skill in the art to discover an algorithm, which optimizes the workable ranges of the DFB laser. It has been held “[W]here the general conditions of a claim are disclosed in the prior art, it is not inventive to discover the optimum or workable ranges by routine experimentation.” *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955).

### ***Response to Arguments***

5. Applicant's arguments filed 19 August 2004 have been fully considered but they are not persuasive.

Applicant argued the following, Kuo et al. (6563846) does not result in both an “approximate temperature” **and** a “set temperature” as recited in the pending claims. In response, the “an approximate temperature” Applicant is relying upon is only a predetermined value used in calculation, after calculation an never truly evolve from a mathematical equation. Kuo et al. teach the use of the same two values which the Applicant inputs (*i.e.*, a wavelength and an output level) to calculate both the calculated value used by the output level controlling section and the set temperature used by the temperature controlling unit. For Applicant to step through the calculations piece by

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piece and naming each piece of the calculation any desired name does not negate the inherently calculations of Kuo et al. which results in the same output(s) through equations (9) and (10), **see col. 3, line 63-col. 4, line 12 and col. 5, lines 1-42.**

Applicant argued the following, "The Broutin '077 patent states that the processor may form the control signals 109, 119 "based on a variety of conventional algorithms." The details of such algorithms, however, are not disclosed by the Broutin '077 patent. In particular, there is absolutely no disclosure or suggestion in the Broutin '077 patent that the processor 160 performs the calculations recited in the pending claims, including calculating both an "approximate temperature" and a "set temperature." In response, Broutin '077 teach that one of ordinary skill *in that art* recognizes that the processor may form the control signals 109 and 119 based on a variety of conventional algorithms, *i.e.* the processor 160 is capable of performing the claimed operation.

### ***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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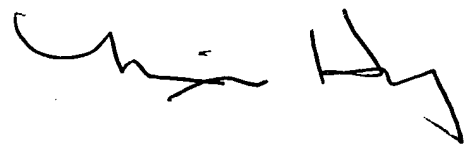
extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cornelius H. Jackson whose telephone number is (571)272-1942. The examiner can normally be reached on 8:00 - 5:00, Monday - Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, MinSun Harvey can be reached on (571)272-1835. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
chj

  
MINSUN OH HARVEY  
PRIMARY EXAMINER